

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

**Directions:** Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

<b>Appeal No. &amp; Caption</b>	23-1078 & 23-1130 - B.P.J. v. West Virginia State Board et al.
<b>Originating No. &amp; Caption</b>	2:21-cv-00316
<b>Originating Court/Agency</b>	Southern District of West Virginia, Charleston Division

<b>Jurisdiction</b> (answer any that apply)		
Statute establishing jurisdiction in Court of Appeals	28 U.S.C. 1291	
Time allowed for filing in Court of Appeals	30 days	
Date of entry of order or judgment appealed	1/5/2023	
Date notice of appeal or petition for review filed	1/23/2023	
If cross appeal, date first appeal filed	n/a	
Date of filing any post-judgment motion	1/20/2023	
Date order entered disposing of any post-judgment motion	n/a	
Date of filing any motion to extend appeal period	n/a	
Time for filing appeal extended to	n/a	
Is appeal from final judgment or order?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
If appeal is not from final judgment, why is order appealable? n/a		

<b>Settlement</b> (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)		
Is settlement being discussed?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

<b>Transcript</b> (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Has transcript been filed in district court?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

<b>Case Handling Requirements</b> (answer any that apply)		
Case number of any prior appeal in same case	n/a	
Case number of any pending appeal in same case	n/a	
Identification of any case pending in this Court or Supreme Court raising similar issue	n/a	
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

<b>Nature of Case</b> (Nature of case and disposition below. Attach additional page if necessary.)
<p>This case is an as-applied challenge to H.B. 3293, a West Virginia law passed in 2021 that categorically bars girls who are transgender from playing on girls' school sports teams. H.B. 3293 mandates that students be restricted to sports teams based on a definition of "biological sex," defined exclusively by an "individual's reproductive biology and genetics at birth." The purpose and effect of the new definition was to exclude all girls who are transgender from girls' sports teams, regardless of whether they have gone through endogenous puberty or received gender-affirming hormones.</p> <p>B.P.J. is a 12-year-old middle school girl who is transgender, and who never will experience endogenous male puberty in light of her medical treatment, but is precluded by H.B. 3293 from playing girls' school sports. Due to a preliminary injunction against H.B. 3293 issued by the District Court, B.P.J. has played girls' school sports at her middle school without incident.</p> <p>On January 5, 2023, the District Court abandoned the reasoning used in its preliminary injunction order, granted summary judgment against B.P.J., dissolved the preliminary injunction, and dismissed the case.</p>

**Issues** (Non-binding statement of issues on appeal. Attach additional page if necessary)

Whether H.B. 3293 violates Title IX as applied to B.P.J.

Whether H.B. 3293 violates the Equal Protection Clause of the Fourteenth Amendment as applied to B.P.J.

**Adverse Parties** (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

Adverse Party: West Virginia State

Board of Education and W. Clayton Burch

Attorney: Kelly C. Morgan

Address: BAILEY & WYANT  
500 Virginia St, E, Suite 600  
Charleston, WV 25301

E-mail: kmorgan@baileywyant.com

Phone: 304-345-4222

Adverse Party: West Virginia Secondary

School Activities Commission

Attorney: Roberta F. Green

Address: SHUMAN MCCUSKEY SLICER PLLC  
Post Office Box 3953  
Charleston, WV 25339

E-mail: rgreen@shumanlaw.com

Phone: (304) 345-1400

**Adverse Parties (continued)**

Adverse Party: Harrison County Board of Education  
and Dora Stutler

Attorney: Susan L. Deniker

Address: STEPTOE & JOHNSON  
400 White Oaks Boulevard  
Bridgeport, WV 26330

E-mail: susan.deniker@steptoe-johnson.com

Phone: 304-933-8154

Adverse Party: State of West Virginia

Attorney: Michael R. Williams

Address: OFFICE OF THE WEST VIRGINIA  
ATTORNEY GENERAL,  
1900 Kanawha Blvd. E, Building 1, Room  
E-26. Charleston, WV 25305

E-mail: Michael.R.Williams@wvago.gov

Phone: 304-558-2021

<b>Appellant</b> (Attach additional page if necessary.)	
Name: B.P.J., by her next friend and mother, Heather Jackson  Attorney: Kathleen Hartnett Address: COOLEY LLP 3 Embarcadero Center, 20th Floor San Francisco, CA 94111  E-mail: khartnett@cooley.com  Phone: Phone: (415) 693-2000	Name: B.P.J., by her next friend and mother, Heather Jackson  Attorney: Tara Borelli Address: LAMBDA LEGAL DEFENSE & EDUCATION FUND 1 West Court Square, Ste. 105 Decatur, GA 30030  E-mail: tborelli@lambdalegal.org  Phone: Phone: (424) 298-7911
<b>Appellant (continued)</b>	
Name: B.P.J., by her next friend and mother, Heather Jackson  Attorney: Sruti Swaminathan Address: LAMBDA LEGAL DEFENSE & EDUCATION FUND 120 Wall Street, 19th Floor New York, NY 10005  E-mail: sswaminathan@lambdalegal.org  Phone: Phone: (212) 809-8585	Name: B.P.J., by her next friend and mother, Heather Jackson  Attorney: Joshua Block Address: AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad St. New York, NY 10004  E-mail: jblock@aclu.org  Phone: Phone: (212) 549-2569
<b>Signature:</b> <u>/s/ Kathleen R. Hartnett</u> <b>Date:</b> <u>2/7/2023</u>  <b>Counsel for:</b> <u>B.P.J., by her next friend and mother, Heather Jackson</u>	
<b>Certificate of Service</b> (required for parties served outside CM/ECF): I certify that this document was served on _____ by <input type="checkbox"/> personal delivery; <input type="checkbox"/> mail; <input type="checkbox"/> third-party commercial carrier; or <input type="checkbox"/> email (with written consent) on the following persons at the addresses or email addresses shown:	
Signature:	Date:

**Adverse Parties (continued)****Adverse Party:** Lainey Armistead**Attorney:** John J. Bursch**Address:** ALLIANCE DEFENDING FREEDOM, 440 First Street NW, Suite 600, Washington, DC 20001**E-mail:** [jbursch@adflegal.org](mailto:jbursch@adflegal.org)**Phone:** 616-450-4235